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September 17, 2012

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: MUR 6621

Dear Mr. Jordan:

We are legal counsel to respondents in the above-captioned matter, and for the reasons stated below, no further action against any of the respondents is warranted in this matter.

In sum, complainant contends that, notwithstanding her admitted completion and submission of an application for membership in the American Hotel & Lodging Association ("AH&LA"), which included payment of a pre-determined membership fee, she was somehow unlawfully and otherwise "illicitly induced" to join and contribute to the American Hotel & Lodging Association Political Action Committee (more commonly known as "Hotel PAC"). In this regard, complainant demonstrates a fundamental misunderstanding of the law by suggesting that a trade association may *only* solicit the executive and administrative personnel of its corporate members for contributions on behalf of its separate segregated fund, failing to recognize that trade associations are also membership organizations which may have non-corporate members who may be solicited for such purpose. See 11 C.F.R. § 114.7(o). In fact, AH&LA is a national trade association that represents the entire U.S. lodging industry. Its membership includes more than 10,000 hotels, hotel service providers and suppliers *and* individuals employed by or with an interest in the lodging industry.

Complainant's call for federal prosecution of certain individuals associated with AH&LA for "signing false documents submitted to the Federal Election Commission" and for involvement in a "continuing conspiracy" is without any factual or legal merit whatsoever and reveals that her real aim in filing the complaint is to inflict reputational harm on the respondents.

The complaint also contains a number of factual inaccuracies and other misstatements, which are identified and corrected below. To correct this information,

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however, it is necessary to first discuss an unfortunate, but entirely unintentional incident which occurred in 2010 -- and which AH&LA took immediate steps to remedy.

In August of 2010 the Broadmoor Hotel Inc. (the "Broadmoor"), a resort hotel located in Colorado Springs, Colorado, and a member of AH&LA, appropriately undertook to host a fundraising event to benefit Hotel PAC. The Broadmoor's management mistakenly invited members of the Broadmoor Golf Club (the "Club"), a private country club located on the same property as the Broadmoor, to the event, which consisted of a golf tournament and dinner followed by a live and silent auction. Fortunately, AH&LA staff realized the mistake shortly after the event and took steps to ensure that *none of the funds contributed by Club members (totaling \$19,425 from 32 individuals) were deposited into Hotel PAC's bank account.* Instead, their funds were deposited into an AH&LA administrative account used to defray legislative expenses, and Club members were informed of the use of their funds.¹

This admittedly improper solicitation was the result of a misunderstanding of AH&LA's instructions to Broadmoor management concerning who could be invited to the Hotel PAC event. Club members have access to and regularly enjoy the Broadmoor's recreational and dining facilities (several Club members own residences at the Broadmoor), so the relationship between the Broadmoor's management and Club members is very close, and Club members and Broadmoor managers communicate regularly about upcoming events and activities. When Broadmoor managers were planning the Hotel PAC event, they mistakenly believed that, because the Broadmoor was a member of AH&LA, and Club members were co-located there and had a very close, special association with the Broadmoor, it was appropriate to include them. Of the approximately 150 people who attended the September 1, 2010 Hotel PAC event, 32 were Club members. Of the more than \$100,000 raised for Hotel PAC at the event, Club member contributions totaled \$19,425. As previously stated, this entire amount was deposited into an AH&LA administrative account and was *not* deposited into Hotel PAC's bank account.

Complainant was one of the Club members mistakenly invited by the Broadmoor to the 2010 Hotel PAC event. Therefore, her reference to a "membership application" form she claims to have completed in 2010 (*see* Compliant Exhibit 2) is simply wrong. She never applied for AH&LA membership in 2010.² (As explained below, complainant did join AH&LA in 2011, completing and submitting a membership application at that time, along with her pre-determined dues payment.) Complainant's assertion that she made a \$50 membership dues payment to AH&LA in 2010 also is incorrect. Complaint Exhibit 3 is an accounting ledger listing certain payments by complainant made in 2010, but the \$50 payment she attributes to AH&LA was not for a membership fee, but was a

¹ As a courtesy, AH&LA also conferred on each Club member who attended the Hotel PAC event a three-month complimentary AH&LA membership, with full membership benefits including a free subscription to AH&LA's *Lodging Magazine*.

² The membership form she has attached was for 2011, not 2010.

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contribution to Hotel PAC – made in response to the mistaken solicitation directed to her by the Broadmoor. Again, her contribution, along with other 2010 Club member contributions, was deposited into an AH&LA administrative account, and *not* into Hotel PAC's bank account.

In 2011, the Broadmoor again offered to sponsor a fundraising event for Hotel PAC. This time, the Broadmoor's management understood that it could not invite Club members. At the same time, the Broadmoor's management had heard from a number of Club members that they had enjoyed the past year's event, and it therefore explored with AH&LA how Club members might proceed with joining AH&LA and participating in the 2011 Hotel PAC fundraising event at the Broadmoor.

AH&LA has various types of memberships -- some in fact are complimentary -- and unlike dues for hotels and for hotel service providers and suppliers, individual membership dues are not fixed at any particular rate but are determined on a case-by-case basis by the AH&LA leadership. Since the Broadmoor's management was supportive of offering Club members an opportunity to join AH&LA, and had indicated to AH&LA that Club members had a genuine interest in the Broadmoor property and therefore were likely to extend their memberships after the Hotel PAC event, AH&LA's leadership agreed to allow Broadmoor managers to invite Club members to join AH&LA as individual members, entitling them to full AH&LA membership benefits, and set their individual dues at \$25 per year.

AH&LA provided the Broadmoor's management with a notice to use for recruiting Club members to join AH&LA (*see* Complaint Exhibit 6), which the Broadmoor's management pasted into emails with additional information and distributed to Club members. In all, 14 Club members elected to join AH&LA (Complainant was one of the 14 who completed and submitted the membership form and paid the pre-determined membership fee, but it is our understanding she did not attend the event.) Ultimately, 10 of the Club members who attended the 2011 event decided to make a contribution to Hotel PAC. (Complainant was not among those 10.)

Since the 2011 memberships in AH&LA extended through the end of August 2012, Club members who joined AH&LA as individual members in 2011 were current AH&LA members as of August 2012, and invited again to attend the Broadmoor's 2012 Hotel PAC event. Nonetheless, when the Broadmoor's management learned that a complaint had been filed with the Federal Election Commission relating to its Hotel PAC event it sought to remove Club members from any potential controversy and withdrew their invitations to the event.

Complainant also alleges that her receipt of the AH&LA publication *Lodging Magazine* was an improper solicitation because it contains requests to support Hotel PAC. *See* Complaint Exhibits 8 and 9. These publications are dated in early 2012, a time during which complainant was a member of AH&LA. It is perfectly appropriate for a

membership organization, such as AH&LA, to include statements of this kind in communications that are distributed to members. Moreover, to the extent this publication was circulated to any Club members who were not AH&LA members at the time, the number would have been *de minimis* and certainly within the 3% "incidental" exception recognized by the Commission in previous advisory opinions and announcements. See *Campaign Guide for Corporations and Labor Organizations*, p.24 (Jan. 2007).

AH&LA and Hotel PAC have a virtually spotless compliance record with the FEC. The organization responded quickly and decisively to the unfortunate solicitation by the Broadmoor of non-members in 2010, making certain none of the erroneously solicited funds were deposited into Hotel PAC's bank account, and then, working through the Broadmoor, lawfully recruited Club members to join AH&LA as individual members in 2011. These actions are consistent with 11 C.F.R. § 114.5(h), which states that an impermissible solicitation will not be deemed a violation if an organization uses "its best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation." *Id.* The Broadmoor's management was overzealous and not careful in its solicitation of Club members, no doubt due to the close, informal relationship it enjoys with Club members, but there has been no nefarious effort to violate the law or to otherwise illicitly induce anyone to contribute against their will.

Respectfully submitted by,

William J. Farah / ^{nap}

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